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15 d/b/a Elco Lighting and Elco Lighting, Inc.

16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

19 DMF, Inc., a California corporation,

Case No. 2:18-cv-07090-CAS-GJS

20 Plaintiff,

[Hon. Christina A. Snyder]

21 v.

22 AMP PLUS, INC., d/b/a ELCO  
23 LIGHTING, a California corporation;  
ELCO LIGHTING, INC., a California  
24 corporation,

**DEFENDANTS' EX PARTE  
APPLICATION FOR AN ORDER  
STRIKING DMF, INC.'S  
UNTIMELY FILED AND  
UNTIMELY SERVED MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT; DECLARATION OF  
ROBERT E. BOONE III IN  
SUPPORT THEREOF**

25 Defendants.

26 AND RELATED COUNTER-  
27 ACTIONS.

1           **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2           **PLEASE TAKE NOTICE** that Defendants AMP Plus, Inc. dba Elco Lighting  
3 (“ELCO”) and Elco Lighting, Inc. (“ELI”) hereby apply *ex parte* for an order striking  
4 Plaintiff DMF, Inc.’s Motion for Partial Summary Judgment and supporting papers  
5 (ECF Nos. 345-353) on the grounds that DMF failed to timely file the Motion by the  
6 February 3, 2020 deadline, and failed to serve Defendants’ counsel with unredacted  
7 copies of the Motion.

8           Good cause exists for striking the Motion because:

9           (1) On June 17, 2019, this Court set a January 13, 2020 deadline to file  
10 dispositive motions. Minute Order – Further Scheduling Conference (ECF No. 226).  
11 On August 21, 2019, the Court, per stipulation of the parties, extended the dispositive  
12 motion filing deadline to January 27, 2020. Minute Order (ECF No. 279).

13           (2) Since September 2019, DMF has repeatedly told this Court that it would  
14 be filing a motion for summary judgment forthwith.

15           (3) Despite those representations, DMF failed to file its summary judgment  
16 motion in October, November or December 2019, or in January 2020.

17           (4) DMF then obtained a one-week extension of the January 27 deadline to  
18 February 3, 2020. Minute Order (ECF No. 344).

19           (5) Despite having had more than ample time to file a summary judgment  
20 motion, DMF failed to timely file its Motion.

21           (6) DMF also failed to timely serve unredacted copies of the Motion.

22           (7) Defendants should not be burdened with having to respond to an  
23 untimely summary judgment motion, especially when DMF could have, as it  
24 represented repeatedly, filed the Motion long before the deadline, and at a minimum, in  
25 a timely manner compliant with the Court’s scheduling order.

26           This application is based on the attached memorandum of points and  
27 authorities, and the Declaration of Robert E. Boone III.

Please take notice that pursuant to Local Rule 7-19, DMF shall have 48 hours from the date of delivery of this application to file and serve any opposition to this application.

ELCO's counsel provided oral notice of this application to DMF's counsel on February 4, 2020. DMF will oppose the application.

Dated: February 4, 2020

# BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Robert E. Boone III  
Robert E. Boone III

Attorneys for Defendants  
AMP PLUS, INC. d/b/a Elco Lighting and  
Elco Lighting, Inc.

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I. INTRODUCTION**

3                   Defendants AMP Plus, Inc. dba Elco Lighting (“ELCO”) and Elco Lighting,  
 4 Inc. (“ELI”) (collectively, “Defendants”) file this *ex parte* application, requesting that  
 5 the Court strike Plaintiff DMF, Inc.’s (“DMF”) Motion for Partial Summary Judgment  
 6 (the “Motion”), on the grounds that DMF failed to timely file the Motion, and failed to  
 7 timely serve unredacted copies of the Motion to Defendants.

8                   **II. STATEMENT OF FACTS**

9                   On June 17, 2019, this Court set a January 13, 2020 deadline to file dispositive  
 10 motions. Minute Order – Further Scheduling Conference (ECF No. 226). On August  
 11 21, 2019, the Court, per stipulation of the parties, extended the dispositive motion  
 12 filing deadline to January 27, 2020. Minute Order (ECF No. 279).

13                  Since September 2019, DMF has repeatedly told this Court that it would be  
 14 filing a motion for summary judgment forthwith. At the November 18, 2019 status  
 15 conference in DMF’s design patent case against Defendants (*DMF, Inc. v. AMP Plus,*  
 16 *Inc. dba Elco Lighting, et al.*, Case No. 2:19-cv-4519-CAS-GJS), DMF again told this  
 17 Court that it was ready to file its summary judgment motion. In opposition to  
 18 Defendants Application to Stay the case pending the PTAB’s *inter partes* review of the  
 19 ‘266 patent, DMF again told this Court that it would be filing its summary judgment  
 20 motion forthwith: “In sum, what remains of the patent case is very straightforward  
 21 and most likely will be resolved in whole in part in a few weeks from now by summary  
 22 judgment.” DMF’s Opposition to Ex Parte Application to Stay the Case at 22 (ECF  
 23 No. 326 at 27 of 29).

24                  Despite those representations, DMF failed to file its summary judgment motion  
 25 in October, November or December 2019, or in January 2020.

26                  On January 24, 2020, DMF obtained a one-week extension of the January 27  
 27 filing deadline to February 3, 2020. Minute Order (ECF No. 344).

1       Despite having had more than ample time to file a summary judgment motion in  
 2 this case, DMF failed to timely file and serve its Motion. Specifically, DMF literally  
 3 waited until the eleventh hour to file redacted versions of several declarations, a  
 4 redacted separate statement of uncontested facts, and a 3-page notice of the Motion  
 5 between 10:33 p.m. and 11:47 p.m. on February 3, 2020. *See* ECF Nos. 345-350. On  
 6 February 4, 2020 – the day after the filing deadline – DMF filed a redacted version of  
 7 its summary judgment brief (ECF No. 351) and an application to seal unredacted  
 8 versions of the Motion papers (ECF Nos. 352-353). In addition, DMF did not timely  
 9 serve Defendants with unredacted copies of the Motion. Declaration of Robert E.  
 10 Boone III, ¶ 4.

11       Moreover, despite representing to this Court that its summary judgment motion  
 12 would be straightforward and simple, DMF's Motion is no such animal. Indeed, DMF  
 13 waited until the midst of trial preparation deadlines to file a partial summary judgment  
 14 motion involving a 400-plus paragraph, 189-page expert declaration and a 123-page  
 15 separate statement of uncontested facts and conclusions of law that contains 247  
 16 purported uncontested facts! *See* ECF Nos. 352-11 and 352-13.

17 **III. ARGUMENT**

18       DMF's Motion was not filed in compliance with the Court's scheduling order.  
 19 DMF had months to prepare and file its Motion. Indeed, DMF proclaimed to the  
 20 Court in September 2019 that it was ready to file. DMF advised the Court in  
 21 November 2019 that its filing of the Motion was imminent. DMF has no valid excuse  
 22 for failing to timely file and serve its Motion.

23       Defendants' opposition to the Motion is due this coming Monday, February 10,  
 24 2020. Defendants should not be burdened with having to respond to an untimely  
 25 summary judgment motion, especially one that DMF could have filed long ago.  
 26 Summary judgment motion filing deadlines are important deadlines and are strictly  
 27

1 enforced. Defendants are in the midst of getting prepared for trial, as numerous pre-  
2 trial deadlines loom.

3 **IV. CONCLUSION**

4 For the foregoing reasons, ELCO respectfully requests that the Court strike  
5 DMF's Motion for Partial Summary Judgment on the grounds that DMF failed to  
6 timely file and serve the Motion, in violation of the dispositive motion filing deadline.  
7

8 Dated: February 4, 2019

**BRYAN CAVE LEIGHTON PAISNER LLP**

9  
10 By: /s/ Robert E. Boone III  
Robert E. Boone III

11 Attorneys for Defendants  
12 AMP PLUS, INC. d/b/a Elco Lighting and  
13 Elco Lighting, Inc.  
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**DECLARATION OF ROBERT E. BOONE III**

I, Robert E. Boone III, hereby declare as follows:

1. I am an attorney duly licensed to practice law in California and the Central District. I am a partner at the law firm of Bryan Cave Leighton Paisner LLP. I represent Defendants Amp Plus, Inc., dba ELCO Lighting (“ELCO”) and Elco Lighting, Inc. (“ELI”) in the above-captioned case. I have personal knowledge of the matters set forth below. I submit this declaration in support of Defendants’ *Ex Parte* Application for an Order Striking DMF’s Untimely Filed and Unserved Motion for Partial Summary Judgment.

2. At the September 16, 2019 status conference in this matter, DMF's counsel David Long advised this Court that DMF intended to file, and would be ready to file soon, its motion for summary judgment.

3. At the November 18, 2019 status conference in DMF's design patent case against Defendants (*DMF, Inc. v. AMP Plus, Inc. dba Elco Lighting, et al.*, Case No. 2:19-cv-4519-CAS-GJS), Mr. Long this Court that DMF intended to file, and was ready to file, its motion for summary judgment.

4. DMF also did not serve Defendants with a complete, unredacted copy of its Motion for Partial Summary Judgment papers until February 4, 2020.

5. I provided oral notice of this application to DMF's counsel Ben Davidson by telephone on February 4, 2020. Counsel for DMF informed me that DMF will oppose the application.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct.

Executed this 4th day of February 2020, in Santa Monica, California.

/s/ Robert E. Boone III

Robert E. Boone III